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November 22, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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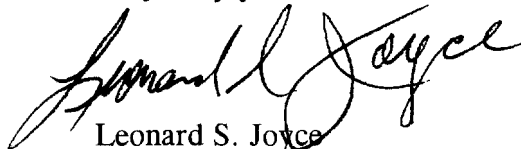
RE: MM Docket No. ⁸⁷~~97~~-268

Forwarded herewith, on behalf of Sonshine Family TV Corp., are an original plus nine copies of its Comments in the above-referenced proceeding.

An original plus five copies are for filing. The other four copies are for each Commissioner.

Should there be any questions concerning this matter, please communicate directly with the undersigned.

Very truly yours,



Leonard S. Joyce

Enclosure

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. ⁸⁷~~97~~-268

To: The Commission:

Comments of Sonshine Family TV Corp.

Sonshine Family TV Corp (Sonshine), licensee of Station WBPH-TV (Channel 60) Bethlehem, PA., by and through its undersigned counsel, files the following Comments in response to the "Sixth Further Notice of Proposed Rule Making" (Sixth Notice) in the above-captioned proceeding.

1. Sonshine supports the Sixth Notice's basic proposal to allot and assign DTV channels on the basis of engineering principles and with full accommodation and replication of NTSC service areas (with the opportunity for station maximization of DTV service areas); however, Sonshine vigorously opposes the FCC's proposal, at paragraph 61 of the Sixth Notice, limiting the replication of the size of the NTSC service areas to those proposed in applications for construction permits granted prior to July 25, 1996, the adoption date of the Sixth Notice. Such a 'cut-off' date, is arbitrary and capricious; has no public interest justification; and, is grossly unfair to licensees who filed minor

modification applications many months before July 25, 1996, but granted shortly thereafter, especially when normal processing times would have resulted in the grant of those construction permits prior to July 25, 1996. In support of this opposition to the July 25, 1996 cut-off date, the following matters are set forth.

2. On January 31, 1996, Sonshine filed its minor change application (FCC Form 301) to increase the effective radiated power of Station WBPB-TV to 2950 kw and to increase its HAAT to 284 meters, remaining on Channel 60 and retaining Bethlehem, PA as its city of license. File Number BPCT960131KF was assigned [Official Notice Requested]. The application contained no unusual or technically difficult matters. Indeed no FAA determination was required for there was no change in site proposed and the proposed antenna was to remain on the same existing tower used by WBPB-TV, and no increase in the height of that existing tower was proposed [Id.].¹ Further, the FCC's staff requested no amendments to the application and none was filed. Given the fact that no FAA determination had to be made, the processing time for the application should have been less than normal. In fact, the processing time turned out to be greater than normal. The application was not granted until August 12, 1996 [Id.]. The FCC is requested to take official notice that the average time from filing to grant of routine minor modification applications, in the year 1995, was approximately 4 ½ months. However, for some

¹WBPB shares the tower with Stations WFMZ-TV, WFMZ-FM, and WLVT-TV. The antennas of those three stations are higher on the tower than WBPB-TV (both existing and proposed). (See Figure 3 engineering attached to Application BPCT-960131KF).

unexplained reason, Sonshine's routine, minor modification application was granted approximately 6 ½ months after filing. There simply is no justification for that increased processing time, and the unexplained delay is grossly unfair to Sonshine and others in Sonshine's position, if the FCC were to retain its July 25, 1996 cut-off date.

3. As the result of the FCC's proposal July 25, 1996 cut-off date Sonshine has been aggrieved, substantially. There is a condition on its construction permit (BPCT960131KF) which reads as follows:

Grant of this authorizations is conditioned on the outcome of the digital television (DTV) rule making preceding in MM Docket No. 97-268. To the extent that the Station's Grade B contour or potential for causing interference is extended into new areas by this authorization, the Commission may require the facilities authorized herein to be reduced or modified.

Because of this condition, the FCC, at Appendix B (Page B-32) of its Sixth Notice, lists Sonshine's "current service" as WBPH-TV's licensed facilities, rather than the facilities authorized in its above-referenced construction permit. And, in turn its DTV ERP is listed at the minimum 50 kw with an HAAT of 225 meters. While Sonshine supports the FCC's proposal to give all TV Stations a minimum DTV ERP (50 kw for UHF), to make them somewhat competitive, Sonshine's DTV ERP and HAAT should replicate WBPH-TV's construction permit coverage, and, therefore, the FCC should remove the above-quoted condition on Sonshine's construction permit, and, in its final DTV Table increase Sonshine's DTV ERP and HAAT to replicate that construction permit service area.

4. Not only is the July 25, 1996 cut-off date grossly unfair to Sonshine and other

licensees similarly situated, but it is arbitrary and capricious. Traditionally, it is the “release date”, or, in case of Rule Making proceedings, the date of publication in the Federal Register, that is the operative date, rather than the adoption date.² Indeed, in this proceeding, the FCC, in its effort to eliminate all existing vacant allotments, determined not to accept additional applications for new NTSC stations that are filed after 30 days from the publication of the Sixth Notice in the Federal Register (Paragraph 60). Yet, without explanation, the FCC chose the adoption date of the Sixth Notice (July 25, 1996) as the deadline to file petitions for rule making proposing to amend the existing TV Table of Allotments (Paragraph 61) and as the date after which grant of minor modification applications would be conditioned upon the outcome of the FCC’s final decision on the DTV Table of Allotments. This is internally inconsistent. The date of publication in the Federal Register should be the operative date in all cases.³ However, even if the release date (August 14, 1996) is determined to be the operative date, Sonshine would receive its requested relief. Sonshine’s above-reference construction permit was granted August 12, 1996 - two days before the release date of the Sixth Notice which further supports removal of the condition on its construction permit.

5. At paragraph 63 of its Sixth Notice, the FCC seeks comment on whether its above-quoted condition on grants of applications should involve different consequences for

² Compare, for example, Section 1.4 of the FCC’s Rules and Regulations which sets the release date or date of Federal Register publication as the operative date in the computation of time. This Rule, nor any other FCC Rule, to undersigned’s knowledge, makes the adoption date the operative date.

³ The Sixth Notice was published in the Federal Register on August 21, 1996 [61FR43209].

applications on file as of the adoption date of the Sixth Notice as opposed to applications filed after that date. Sonshine submits that there should be three classifications: (1) applications on file five months or more prior to the date of publication of the Sixth Notice in the Federal Register; (2) applications filed later than five months prior to the date of publication in the Federal Register; and (3) applications filed after the date of publication in the Federal Register. Applications in category (1), supra would be granted, without condition (or in cases such as Sonshine, the condition would be removed) and be given full accommodation and replication. Applications in category (2), would be processed and granted prior to the processing and grant of applications in category (3), supra and be given priority over category (3) applications in determining the degree of service area replication.

6. With respect to Sonshine's proposed category(1) supra, Sonshine proposes five or more months prior to the date of publication in the Federal Register, for the filing of applications for minor modifications by TV licensees entitled to unconditional grants of construction permits, since (1) that would be the normal time for the processing and grant of such applications; (2) it would exclude applications filed shortly before release of the Sixth Notice and in anticipation of its release; and (3) uses the filing date, rather than the grant date, as the operative date, for whereas the applicant has control over its filing date, it has no control over the grant date. Additionally, adoption of Sonshine's category (1), supra would have a minimal impact on the adoption of a final DTV Table of Allotments,

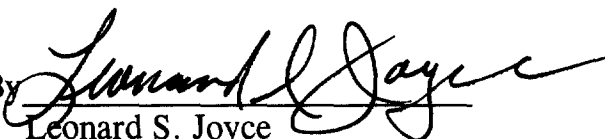
for relatively few applicants fall in this category. The FCC acknowledges, at Paragraph 63 of its Sixth Notice, that “in many cases it may be possible to permit modifications of existing stations without affecting the DTV Table” (even with respect to modification applications yet to be filed). Sonshine submits that applicants falling within category (1) supra not only should be, but can be, incorporated into the NTSC database upon which the final DTV Table is based, with de minimis changes to the draft DTV Table.

7. Finally, Sonshine supports the FCC’s proposal, at Paragraph 63 of its Sixth Notice, to continue to permit, after the release of its Sixth Notice, the filing of applications to modify the technical facilities of existing or authorized NTSC Stations, but with the above-quoted condition upon any grants of such future applications. However, Sonshine proposes, in this regard, that the FCC address the question of construction periods listed on construction permits granted with the above- quoted condition. Normally such construction period is limited to 24 months, with extensions granted for good cause. However, this proceeding could go on for years (including possible petition for reconsideration and court appeals). Therefore, the FCC should consider a blanket extension of time to construct for a limited period following a final decision in this proceeding. Otherwise a permittee will be obliged to expend considerable time and money to construct substantially increased facilities and then later be required by the FCC to reduce power and/or HAAT which might result in considerable financial hardship. By granting the blanket extension, the permittee would not be required to purchase equipment

and construct until it was determined what power and HAAT will be finally authorized.

Respectfully Submitted

Sonshine Family TV Corp.

By 
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